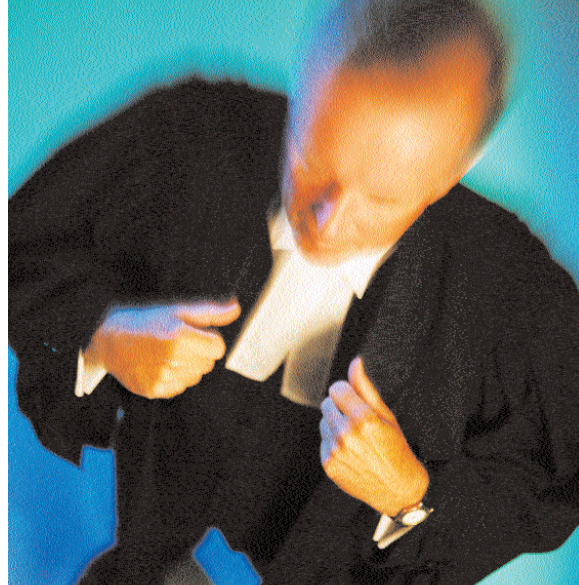


CIVIL MEDIATION PILOT PROJECT



INSURANCE LITIGATION LEGAL ALERT DECEMBER, 2004

CIVIL MEDIATION PILOT PROJECT ADDS ANOTHER METHOD OF RESOLVING DISPUTES OUT OF COURT

Alberta Justice has recently introduced another tool to resolve disputes between parties. The Civil Mediation Pilot Project begins on January 1, 2005 and applies to all non-family civil actions, such as commercial contract disputes and insurance litigation, commenced in Lethbridge and Edmonton Court of Queen's Bench, on or after September 1, 2004. Parties to actions commenced prior to September 1, 2004 can opt into the program by agreement. Although this pilot project is not available in Calgary and other parts of Alberta at the present time, the project is expected to extend to the remainder of Alberta within 2 years.

Mediation is a method of dispute resolution where parties attempt to reach an agreement with the assistance of a mediator. Mediation is a flexible and informal process which allows parties to a dispute to communicate with one another in hopes of resolving issues by examining facts and developing an understanding of their common and separate interests. The mediator controls the process, while the parties control the results. The mediator is impartial and neutral and will not make any decisions or determinations, and does not suggest solutions, but will assist the parties and their legal counsel to do so.

Mediation may be a viable alternative to Judicial Dispute Resolution and going to trial in circumstances where the cost to litigate may outweigh the cost of the claim, or when the claim focuses more on financial issues than complex points of law. As each case is different, it is best to discuss all available options with your lawyer and decide the appropriate course of action together.

THE MEDIATION PROCESS

REQUEST TO MEDIATE

The parties involved in the case decide whether they wish to mediate or not. Either party to an action can start the process by filing a Request to Mediate. A party can serve a Request to Mediate any time after the Affidavits of Records have been filed and served. If all parties agree to mediation, they can then choose a mediator from the Roster (or as agreed) and negotiate fees. If the parties cannot agree on a mediator, the Mediation Coordinator will appoint a mediator from the roster. However, once a Certificate of Readiness has been filed, the parties may not file a Request to Mediate.

FAILURE TO COMPLY

If a party objects to mediation, the party has 30 days to apply to the Mediation Coordinator for an exemption. Parties to the action will then be asked to meet with the Mediation Coordinator for a Situation Assessment Meeting (S.A.M.). During the S.A.M., parties will be able to learn more about the mediation process and assess whether or not mediation would work in their specific situation. It is hoped that parties will be able to reach their

own agreement as to whether to proceed to mediation or not. However, if the parties cannot agree, the Mediation Coordinator will decide whether parties should attend at mediation or not. The decision of the Mediation Coordinator can be appealed to a judge of the Court of Queen's Bench. However, a party that fails to attend mediation without an exemption, may be subject to an order for costs and the failure to attend or cooperate may be considered in awarding costs of the action.

LOCATION AND COST

Mediations are held outside the courthouse, with the location decided by private arrangement with the mediator.

Parties pay for mediation after discussing the costs of mediation with the mediator. Usually costs of mediation are split equally between the parties. However, some of the cost of the mediation may be covered if one or more parties satisfy criteria established as part of the project.

CONFIDENTIALITY

Everything said in mediation is confidential unless the parties consent to waive confidentiality or if disclosure is required by law. All discussions and materials produced in mediation are inadmissible in any proceedings.

MEDIATION COORDINATORS

There are two Mediation Coordinators in Edmonton:

Marnie Plucer Phone: (780) 427-2721 Email: marnie.plucer@gov.ab.ca

Sandra Shulz Phone: (780) 427-2717 Email: sandra.shulz@gov.ab.ca

For more information please contact James McGinnis in our Edmonton office at 780-423-8520 or Bruce Churchill-Smith, Q.C. in our Calgary office at 403-294-7019.

The Fine Print:

This legal alert is intended to provide general information concerning developments in the law and is not intended to provide legal advice in respect of any particular situation.

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